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Supreme Court No. 97057-2
Court of Appeals No. 34678-8-II

SUPREME COURT OF THE STATE OF WASHINGTON

JOHN SCANNELL,

Petitioner,

v.

GEORGIY BULKHAK,

Respondent.

**OBJECTION TO MOTION TO ALLOW AMICUS BRIEF
AND MOTION TO STRIKE AMICUS BRIEF**

RICHARD PATRICK

Attorney at Law

5853 33rd Ave. NW, Suite 102

Gig Harbor, WA 98335

Phone: (253) 858-6800

Fax: (253) 858-6805

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. OBJECTION	2
1. Marathon’s interest in this case is tangential, at best	2
2. Marathon fails to identify any issue actually present in this case with which it is familiar and about which it would offer relevant argument	3
a. <i>The “Central Issue”</i>	3
b. <i>Judicial Immunity</i>	5
3. This court should deny Marathon’s motion to be permitted to file an amicus brief and should strike the brief that Marathon has filed.	6
III. CONCLUSION	7

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Washington Cases</u>	
<i>Adkins v. Clark County</i> , 105 Wash.2d 675, 717 P.2d 275 (1986).....	6
<i>Durrah v. Wright</i> , 115 Wn.App. 634, 63 P.3d 184 (2003).....	5
<i>State v. Gonzalez</i> , 110 Wn.2d 738, 757 P.2d 925 (1988).....	6
<i>Taggart v. State</i> , 118 Wash.2d 195, 822 P.2d 243 (1992).....	6
<i>Wilson v. Korte</i> , 91 Wn. 30, 157 P. 47 (1916).....	2
<u>Other Authorities</u>	
RAP 10.6.....	1

I. Introduction

John Grindell, Marathon Funding Services Inc., Robert Crawford, Sophia Bagnaschi, KKKKK Corporation, Paul King, and John Doe (an alleged tenant residing 545 6th St. in Bremerton, WA) (hereinafter Marathon) have filed a motion for permission to file an amicus brief in this case.

Respondent Georgiy Bulkhak submits this objection to Marathon's motion to be permitted to file an amicus brief and motion to strike the brief filed by Marathon.

Under RAP 10.6(b), this Court may permit a non-party ("applicant") to file an amicus brief if the non-party files a motion addressing:

- (1) applicant's interest and the person or group applicant represents,
- (2) applicant's familiarity with the issues involved in the review and with the scope of the argument presented or to be presented by the parties,
- (3) specific issues to which the amicus curiae brief will be directed, and
- (4) applicant's reason for believing that additional argument is necessary on these specific issues.

Respondent Bulkhak objects to Marathon being permitted to file an amicus brief in this case since Marathon fails to present a persuasive

argument as to why it should be permitted to file an amicus brief.

For purposes of this Objection, Respondent Bulkhak adopts and incorporates the facts as set forth in the decision of the Court of Appeals.

II. Objection

1. Marathon's interest in this case is tangential, at best.

Respondent Bulkhak purchased the property at issue in this case at a public foreclosure sale.

A tax deed is a new and independent title granted by the state and bars all inquiry as to objections to the title or encumbrances made or existing before the tax deed was issued.¹ A foreclosure of property under a tax lien “vests in a purchaser at a sale held under such foreclosure a new title independent of all previous titles or claims of title to the property (*Hanson v. Carr*, 66 Wn. 81, 118 Pac. 927). Manifestly, both record and possessory title are equally absolutely destroyed by such a foreclosure.”²

Paul King, one of the entities seeking permission to file an amicus brief, is the former owner of the property who failed to pay property taxes on the property to Kitsap County for several years, resulting in the tax sale at which Mr. Bulkhak purchased the property.

Petitioner Scannell had an agreement with Paul King to lease one unit in the property. The lease provided Scannell an option to purchase

the unit. Scannell never exercised his option to purchase.

Paul King has never been a party to this case. At the same time, Paul King is the only party seeking permission to file an amicus brief that has any relationship to the subject property that is supported by the record. For the first time, KKKKK Corporation has appeared and claimed it, too, is an “owner” of the property at issue in this case. However, KKKKK Corporation appears nowhere in the record and, assuming *arguendo* that it was once an owner of the property, any ownership interest it had in the property was extinguished by the tax sale at which Mr. Bulkhak purchased the property.

To the extent Paul King, John Doe, and KKKKK Corporation claim to be “tenants” in the building, nothing in the record supports the conclusion that they have a valid rental agreement with Mr. Bulkhak. Mr. King, Mr. Doe, and KKKKK Corporation are trespassers, not tenants.

None of the parties seeking permission to file an amicus brief have a legitimate lawful interest in the subject property or this case.

2. Marathon fails to identify any issue actually present in this case with which it is familiar and about which it would offer relevant argument.

- a. *The “Central Issue”*

Marathon asserts that, “The central issue of the case, and the

¹ *Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47 (1916).

fundamental legal right that the Plaintiff attempts to deprive the Defendant of, is the Constitutionally inviolate Seventh Amendment right to a jury trial in cases involving the dispossession of real estate.”³ Marathon characterizes this action as one where, “the plaintiff, who is an alleged owner who has never been in possession seeks to eject and or evict owners and tenants who are in possession, without due process of law and without a jury trial.”⁴ Marathon’s assertion and characterization lacks support in the record.

As discussed above, Mr. King is the only entity with a demonstrated prior ownership interest in the property at issue in this case. However, as the Court of Appeals found, Mr. King’s interest was exterminated by the Kitsap County tax sale after Mr. King failed to pay property taxes on the subject property.⁵ Further, Mr. King is not a party to this matter and Mr. Scannell has no current or prior ownership interest in the property. Mr. Bulkhak, on the other hand, has valid title to the property issued by Kitsap County.

There is no aspect of this case which would “dispossess” a purported current or prior owner of the property. Marathon’s argument to

² *Wilson v. Korte*, 91 Wn. 30, 33, 157 P. 47 (1916).

³ Motion to Allow Amicus Brief, p. 3.

⁴ Motion to Allow Amicus Brief, p. 3-4.

⁵ *Bulhak v. Scannell*, 50997-1-II, 2019 WL 211115, at *1 (Wash. Ct. App. Jan. 15, 2019).

the contrary lacks any support in fact or law.

Marathon does cite *Durrah v. Wright*, 115 Wn.App. 634, 643, 63 P.3d 184 (2003) for the proposition that Washington recognizes the “right of jury trial to a party who is in possession.”⁶ However, *Durrah* is distinguishable from this case. The *Durrah* court framed the issue and holding in that case as, “whether a plaintiff claiming title by adverse possession has the right to a jury trial under article I, § 21 of the Washington Constitution. The answer is no if, as is true here, the plaintiff presently possesses the disputed land.”⁷

This case began when Mr. Bulkhak purchased property formerly owned by Paul King at a tax sale and filed an unlawful detainer action seeking a writ of restitution to remove Mr. Scannell from the property after Mr. Scannell refused to both pay rent or vacate the property. Neither Mr. Bulkhak nor Mr. Scannell have ever asserted title to the property under a theory of adverse possession. *Durrah* and its holding is irrelevant to this case.

b. Judicial Immunity

Under common law, judges are absolutely immune from suits in

⁶ Amicus Brief, p. 7.

⁷ *Durrah v. Wright*, 115 Wn. App. 634, 635, 63 P.3d 184 (2003).

tort that arise from acts performed within their judicial capacity.⁸ Judicial immunity applies even when a judge acts in excess of his or her jurisdiction, as long as there is not a clear absence of jurisdiction.⁹ Immunity does not exist for the benefit of the individual judge but exists to protect the administration of justice by ensuring that judges can decide cases without fear of personal lawsuits.¹⁰

Nothing in this case indicates that the trial judge or a judge of the Court of Appeals is facing a lawsuit for their actions in this case. The issue of judicial immunity is irrelevant to any aspect of this case. Argument about judicial immunity is irrelevant.

3. This court should deny Marathon's motion to be permitted to file an amicus brief and should strike the brief that Marathon has filed.

With the exception of a few headings and a one-page discussion of the history of the right to jury trial, the Amicus Brief filed by Marathon is word-for-word identical to the motion filed by Marathon.

This court has repeatedly held that arguments raised only by amici curiae need not be considered.¹¹ The issues of the right to jury trial in an

⁸ *Taggart v. State*, 118 Wash.2d 195, 203, 822 P.2d 243 (1992); *Stump v. Sparkman*, 435 U.S. 349, 364–65, 98 S.Ct. 1099, 55 L.Ed.2d 331 (1978).

⁹ *Adkins v. Clark County*, 105 Wash.2d 675, 677–78, 717 P.2d 275 (1986) (citing *Burgess v. Towne*, 13 Wash.App. 954, 958, 538 P.2d 559 (1975)).

¹⁰ *Taggart*, 118 Wash.2d at 203, 822 P.2d 243 (citing *Adkins*, 105 Wash.2d at 677, 717 P.2d 275).

¹¹ *E.g.*, *State v. Gonzalez*, 110 Wn.2d 738, 752, 757 P.2d 925, 932 (1988); *Coburn v. Seda*, 101 Wash.2d 270, 279, 677 P.2d 173 (1984); *Washington State Bar Ass'n v. Great*

adverse possession action and whether the doctrine of judicial immunity applies in this case are raised for the first time in the motion and brief filed by Marathon. The brief adds nothing relevant to the issues in this case or helpful to this court's analysis of the issues in this case. It would be a waste of this court's time to consider any argument presented by Marathon. This court should strike the amicus brief filed by Marathon.

III. CONCLUSION

The Motion and Amicus Brief filed by Marathon are made up entirely of discussions of legal issues that are irrelevant to any issue before this court and it would be a waste of this court's time to consider either the motion or the brief. This court should deny the motion and strike the brief filed by Marathon.

DATED this _____ day of June, 2019.

Respectfully submitted,

/s/
RICHARD PATRICK, WSBA No. 36770
Counsel for Respondent Bulhak

W. Union Fed. Sav. & Loan Ass'n, 91 Wash.2d 48, 59–60, 586 P.2d 870 (1978); *Long v. Odell*, 60 Wash.2d 151, 154, 372 P.2d 548 (1962).

RICHARD P. PATRICK, ATTORNEY AT LAW

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5358 33rd Ave NW
Suite 102
Gig Harbor, WA, 98335
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